

E-111/GR-91-74 ORDER ACCEPTING AND ADOPTING STIPULATION AND OFFER  
OF SETTLEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson  
Cynthia A. Kitlinski  
Dee Knaak  
Norma McKanna  
Patrice M. Vick

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application  
of Dakota Electric Association  
for Authority to Increase its  
Rates for Electric Service in  
the State of Minnesota

ISSUE DATE: September 26, 1991

DOCKET NO. E-111/GR-91-74

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**PROCEDURAL HISTORY**

**I. PRIOR COMMISSION ACTION**

On February 12, 1991, Dakota Electric Association (Dakota or the Co-op) filed a petition seeking a general rate increase of \$4,002,777, or 6.03%. Along with the rate increase petition, Dakota filed a proposed interim rate schedule, to be effective April 22, 1991.

On April 15, 1991, the Commission issued two Orders, one accepting the filing and suspending the proposed rates, the other referring the case to the Office of Administrative Hearings for contested case proceedings. The Office of Administrative Hearings assigned the case to Judge Phyllis A. Reha for purposes of settlement and to Judge Allen E. Giles for trial purposes.

On April 19, 1991, the Commission set interim rates pursuant to Minn. Stat. § 216B.16, subd. 3 (1990). Interim rates were authorized as of April 22, 1991 and were set at a level allowing an additional \$3,963,702 in annual revenues.

**II. PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE**

**A. Prehearing Conference and Settlement Conference**

Administrative Law Judge Allen E. Giles held a prehearing conference on April 24, 1991. At the prehearing conference the parties and Judge Giles identified the major issues, established procedural guidelines, and set time tables. Judge Giles granted the Department of Public Service (the Department) its petition to intervene.

Appearances at the prehearing conference were made by the following: Harold LeVander, Jr., Maun and Simon, Attorneys at Law, 2300 World Trade Center, 30 East Seventh Street, St. Paul, Minnesota 55101, for Dakota Electric Association; Julia E. Anderson, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, for the Minnesota Department of Public Service; Stuart Mitchell, Rate Analyst and David Jacobson, Statistical Analyst, 780 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, for the Minnesota Public Utilities Commission.

Administrative Law Judge Phyllis A. Reha notified the parties that a settlement conference was scheduled for June 24, 1991. During the process of discussions among the parties, Judge Reha monitored negotiations and encouraged the parties to share information. Because the parties entered into meaningful settlement negotiations, Judge Reha canceled the settlement conference.

The parties filed extensive direct testimony, which became part of the record.

#### **B. Public Hearings**

Judge Giles held two public hearings on May 22, 1991 to receive comments and questions from non-intervening ratepayers. The first hearing was held in Apple Valley, the second in Farmington. Commissioners Darrel Peterson and Patrice Vick attended the Apple Valley hearing, at which four ratepayers commented on the proposed rate increase. No ratepayers appeared at the Farmington hearing. Members of the Commission staff, Company representatives, and Department representatives attended both hearings.

The Commission received one letter from a member of the public regarding the proposed rate increase. The party advocated decreasing rather than increasing the Co-op's rates.

#### **C. Evidentiary Hearings and Certification to the Commission**

Judge Giles scheduled evidentiary hearings for July 24-26, 1991. The hearings, however, never took place because a Stipulation and Offer of Settlement was filed by the parties on July 16, 1991. The parties also submitted a joint motion to Judge Giles on the same date. The motion requested that the Stipulation and Offer of Settlement be deemed a resolution of all disputed financial and rate design issues, and that the Stipulation be certified to the Commission for review and acceptance.

On August 12, 1991, Judge Giles filed an Order certifying the Stipulation and Offer of Settlement to the Commission. On the same date Judge Giles closed his file and turned the official record over to the Commission.

### **III. PROCEEDING BEFORE THE COMMISSION**

On September 5, 1991, the matter came before the Commission for consideration. The parties to the Stipulation spoke in support of its acceptance by the Commission.

Upon review of the entire record of this proceeding, the Commission makes the following Findings, Conclusions, and Order.

### **FINDINGS AND CONCLUSIONS**

#### **IV. JURISDICTION**

The Commission has general jurisdiction over the Co-op under Minn. Stat. §§ 216B.01 and 216B.026. These statutes provide for Commission regulation of cooperative electric associations if the members elect to become subject to rate regulation by the Commission. In 1980, a majority of Dakota members made such an election and the Co-op has been regulated by the Commission since 1981.

The matter was properly referred to the Office of Administrative Hearings under Minn. Stat. §§ 14.57-14.62 (1990) and Minn. Rules, parts 1400.0200 et seq.

#### **V. FURTHER ADMINISTRATIVE REVIEW**

Under Minn. Rules, part 7830.4100, any petition for rehearing, reconsideration, or other post-decision relief must be filed within 20 days of the date of this Order. Such petitions must be filed with the Executive Secretary of the Commission, must specifically set forth the grounds relied upon and errors claimed, and must be served on all parties. The filing should include an original, 13 copies, and proof of service on all parties.

Adverse parties have ten days from the date of service of the petition to file answers. Answers must be filed with the Executive Secretary of the Commission and must include an original, 13 copies, and proof of service on all parties. Replies are not permitted.

The Commission, in its discretion, may grant oral argument on the petition or decide the petition without oral argument.

Under Minn. § 216B.27, subd. 3 (1990), no Order of the Commission shall become effective while a petition for rehearing is pending or until either of the following: ten days after the petition for rehearing is denied or ten days after the Commission has announced its final determination on rehearing, unless the Commission otherwise orders.

Any petition for rehearing not granted within 20 days of filing is deemed denied. Minn. Stat. § 216B.27, subd. 4 (1990).

## **VI. DAKOTA ELECTRIC ASSOCIATION**

Dakota Electric Association is a cooperative association organized under Minn. Stat. § 308.05 for the purpose of supplying electric service to approximately 60,269 customers in Dakota County and portions of Scott, Rice and Goodhue Counties in Minnesota. The Co-op's principal office is in Farmington, Minnesota. The Co-op purchases all of its electric requirements from Cooperative Power Association of Eden Prairie, Minnesota.

## **VII. THE STIPULATION AND OFFER OF SETTLEMENT**

The Stipulation and Offer of Settlement was the product of negotiation, cooperation and the free flow of information among the parties. After the main agreement was signed in Stipulation form, the Commission felt that certain information had not been included in the Stipulation or should be more fully developed for Commission review. The Commission therefore sent the Co-op information requests, which the Co-op answered fully. In a letter to Judge Giles dated July 30, 1991, the parties agreed that the information requests and answers as stated in the letter should be made part of the record. In a second letter to Judge Giles dated July 30, 1991, the parties proposed two addenda to the Stipulation. One addendum substituted certain language regarding privileged material for a paragraph in the original Stipulation. The other addendum incorporated the revised revenue requirement the parties had agreed upon. The parties agreed that the addenda should be part of the official record.

In its original petition, the Co-op requested a revenue increase of \$4,002,777, or 6% above existing revenues. The Department initially proposed adjustments to rate base and operating income to reduce the proposed increase by \$29,423. A depreciation study later revealed that Dakota had inadvertently booked an over-accrual of \$22,630 in 1990; the Department therefore proposed a further reduction in the revenue deficiency of \$22,630. The parties finally agreed on the Department's proposed rate increase of \$3,950,724. To arrive at this figure, the parties had agreed to the Department's adjustments in advertising expenses, nonrecurring expenses, charitable contributions, working capital and depreciation.

The parties stipulated to an overall rate of return of 8.20%, using the Co-op's proposed capital structure and cost rates to derive the number. Although the Department independently arrived at a rate of return of 8.28%, the Co-op stayed with its originally proposed rate of 8.20%. The Co-op stated at the Commission meeting that this figure would provide sufficient and appropriate revenue for the Co-op and the Co-op would therefore request that its rate be applied.

In their Stipulation, the parties addressed rate case issues of sales levels, the Co-op's Conservation Improvement Plan (CIP) and rate design. The Department did not recommend an adjustment to Dakota's proposed test year sales levels. Although the Department found the Co-op's basic CIP proposal acceptable, the Department recommended that Dakota should give more attention to long-term goals and strategies, and should develop a grant program for industrial, commercial and agricultural uses. The parties agreed that the Co-op should submit a later compliance filing addressing these issues. In their Stipulation and informational filings, the parties resolved and clarified all rate design issues.

#### **VIII. COMMISSION ACCEPTANCE AND ADOPTION OF THE STIPULATION AND OFFER OF SETTLEMENT**

The Commission finds that the terms of the Stipulation are fair, reasonable, and fully supported by documented evidence. The Commission will accept and adopt the Stipulation.

Minn. Stat. § 216B.03 requires that every rate received by a public utility shall be just and reasonable. In this case, every essential issue of rate base, income, and expense was fully documented by filed testimony. The Co-op supported its rate of return rather than the figure that the Department had arrived at, which was slightly higher, because the Co-op felt that the proposed rate of return would result in adequate and reasonable rates.

The elements of the Co-op's proposal were fully documented. The parties filed direct testimony supporting their positions. When the Commission felt that certain issues were unclear or incomplete, the Co-op answered the Commission's information requests fully. Finally, the parties documented their agreement in Stipulation form.

It is the Commission's duty as a regulatory agency to ensure that any rate case proceeding, whether developed through contested case hearing or concluded by stipulation, results in just and reasonable rates. While a stipulation may shorten the process, the Commission will never hesitate to proceed to full evidentiary hearings if the record is incomplete or inconsistent, or indicates an unjust result. The Commission examined the Stipulation and supporting evidence closely. The Commission is fully satisfied that the elements of the agreement are supported by documented evidence, and the final result is just and reasonable. In this particular case, therefore, the Stipulation is a benefit for ratepayers and the general public, because the Co-op and the regulatory agencies save time and money avoiding litigation.

Finally, the Commission wishes to commend the parties involved, who exhibited a spirit of cooperation at the same time they strongly advocated their respective positions. The parties' cooperation resulted in a free flow of information, an essential element of any just and reasonable agreement.

#### **IX. LEAD/LAG STUDY TO CALCULATE WORKING CAPITAL**

In the Stipulation, the parties agreed to the Co-op's use of a formula to calculate the working capital component of rate base. The Co-op had used the same formula to calculate rate base in its last rate case. Since the time of the last Dakota rate case, however, many Minnesota utilities have begun calculating cash working capital by using a lead/lag study. A lead/lag study calculates the cash operating needs of a utility by recognizing the time lag between the collection of cash from customers and the payment of cash for operating expenses. While the formula method has the virtue of simplicity, the lead/lag method is considered more precise.

Although the lead/lag method may be more precise, the Commission finds that the Co-op's formula method is sufficiently accurate to be approved for this rate case proceeding. The Commission will require, however, that the Co-op submit lead/lag studies in future rate proceedings, unless Dakota can demonstrate that the formula method accurately reflects cash working capital needs.

#### **ORDER**

1. The Commission accepts and adopts the Stipulation and Offer of Settlement filed July 16, 1991, as amended and supplemented by two letters to Judge Allen E. Giles dated July 30, 1991. The Stipulation, supplement and addenda are attached to and incorporated into this Order.
2. Within 30 days of the date of this Order, the Co-op shall file with the Commission for its review and approval, and serve on the Department, revised schedules of rates and charges reflecting the provisions of this Order.
4. Within 30 days of the date of this Order, the Co-op shall file with the Commission for its review and approval, and serve on the Department, proposed member notices explaining its final rates.
5. Within 30 days of the date of this Order, the Co-op shall file with the Commission for its review and approval, and serve on the Department, a proposed plan for refunding with interest the revenue collected during the interim rate period in excess of the amount authorized herein.

6. The Department shall have 15 days from the date of filing of the items required in Paragraphs 4 and 5 in which to file any comments regarding the filings.
7. Within 90 days of the date of this Order, the Co-op shall file with the Commission for its review and approval, and serve on the Department, a revised Conservation Improvement Plan as described on page 7 of the Stipulation and Offer of Settlement.
8. Within nine months of the date of this Order, the Co-op shall file with the Commission for its review and approval, and serve on the Department, an energy grant program for its commercial, industrial, and agricultural members and a proposed method for recovering conservation costs.
9. The Co-op shall keep billing data on future sales to its members as indicated on pages 6-7 of the Stipulation and Offer of Settlement.
10. The Co-op shall use a lead/lag study to calculate cash working capital in any future rate proceeding, unless it can demonstrate that its present formula accurately reflects cash working capital needs.
11. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)